

REMARKS/ARGUMENTS

Claim Rejections Under 35 U.S.C. § 103

The Examiner rejects claims 1, 2, 5, and 9 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,249,511 to Shumate et al (“Shumate”), in view of U.S. Patent No. 6,157,776 to Onken (“Onken”), and further in view of U.S. Patent No. 3,586,822 to Pastore (“Pastore”).

Claim 1

Prima facie case of obviousness not established--Through the decisions of the CCPA and the Court of Appeals for the Federal Circuit, certain well-established principles of claim construction and review have been developed. If these principles are not met, a prima facie case of obviousness under 35 U.S.C. §103 has not been established and the claim in issue should be allowed. The undersigned respectfully suggests that these tests are not met by the prior art in this case and a prima facie case of obviousness has not been established. These tests will be briefly applied to the individual claims rejected by the proposed combination.

Obviousness to try and modification or combination of references is not the standard-- The Examiner states that, “It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the control panel of the Shumate device to be removable in view of Pastore for improved interchangeability of control

panels.” It is clear from the Pastore reference that did not intend to have a control panel that is selectively removeable as described in Amended Claim 1. For example, at column 4, lines 50-53, Pastore states, “However, there is generally no need to remove the control panel since all electrical servicing and repairs may be accomplished by replacing the plug-in components.” This statement makes it clear that the removal of the control panel in Pastore is for maintenance purposes, and is not “selectively removable such that the control panel can be used on multiple types of containment devices,” as recited in Amended Claim 1. The control panel of the present invention, as noted in Amended Claim 2 is interchangeable with the direct connect system, a remote system, and a portable storage caddy. Nothing in Pastore suggests the type of control panel disclosed in Amended Claims 1 and 2. With respect to the Shumate reference, new claim 11 has been added to claim that in one embodiment of the invention, tubing is used for transfer of waste cooking oil only. In the Shumate reference, both fresh and waste oil are pumped through the same pipes. A *prima facie* case of obviousness is not made out when two references are improperly modified further to meet the limitations of the claim in issue.

All claim limitations must be considered--35 U.S.C. § 103 requires that the subject matter as a whole be reviewed. There are certain limitations of claim 1 which are still not shown in the combination proposed by the Examiner. For example, none of the references discloses the selectively removable control panel as described in Amended Claims 1 and 2. According to 35 U.S.C. § 103, it must be considered and given proper weight if the correct result is to be reached.

Pastore teaches away--Although the Examiner states that Pastore discloses a selectively removable control panel, in actuality, Pastore teaches away from the interchangeable control panel of the present invention. The quote from column 4 (see above) shows that Pastore does not intend for the control panel to be selectively removable.

The arguments above relating to claim 1 are equally applicable to claims 2 and 5, and are hereby incorporated by reference.

Claim 9

Obviousness to try and modification or combination of references is not the standard-- The Examiner states that Shumate discloses a “filter 34” in rejecting claim 9 of the present invention. The undersigned assumes that the Examiner meant to refer to filter 24. The filter 24 in the Shumate reference is clearly not located within the container as recited in Amended Claim 9. In Shumate, the filter 24 is located two stations away from the waste tank 30, which can be clearly seen in Figure 1. Also, nothing in Shumate, Onken, or Pastore makes any mention of a portable waste oil storage caddy, as recited in Amended Claim 9. A *prima facie* case of obviousness is not made out when two references are improperly modified to meet the limitations of the claim in issue.

All claim limitations must be considered--35 U.S.C. § 103 requires that the subject matter as a whole be reviewed. There are certain limitations of claim 9 which are still not shown in the combination proposed by the Examiner. For example, the filter being located within the container is not disclosed or described in any of the cited references. According to 35 U.S.C. § 103, it must be considered and given proper weight if the correct result is to be reached.

Prior art does not teach the source of the problem--The Office Action takes the position that claim 9 is unpatentable over Shumate in view of Onken and Pastore. However, nothing in the cited references deals with the issue of a portable storage device, wherein the waste oil can be transferred from a fryer to another containment device by the caddy. The prior art clearly does not teach the source of the problem and therefore could not be said to teach its solution.

In fact, not only do the cited references not teach the source of the problem or its solution, but each of the devices is clearly intended to be a stationary unit, and therefore teaches away from a portable caddy.

The Examiner rejects claims 3 and 4 under 35 U.S.C. § 103(a) as being unpatentable over Shumate in view of Onken and Pastore, and further in view of U.S. Patent No. 5,159,962 to Dow (“Dow”). Since the undersigned believes that claims 1 and 2 are in condition for allowance, and since claims 3 and 4 depend therefrom, claims 3 and 4 are believed to be in condition for allowance.

The Examiner rejects claims 6-8 under 35 U.S.C. § 103(a) as being unpatentable over Shumate in view of Onken and Pastore, and further in view of U.S. Patent No. 5,586,486 to Nitschke et al (“Nitschke”).

Claim 6

Obviousness to try and modification or combination of references is not the standard-- Nothing in any of the cited references could be said to suggest a combination of the shell of Nitschke with the oil containment units of either Shumate or Onken. None of the references describes a need for insulation of the waste oil containment unit, and in fact, Nitschke never makes any mention of a waste oil containment unit. The shell of Nitschke would serve no purpose in either Shumate or Onken. A *prima facie* case of obviousness is not made out when two references are improperly combined and then modified further to meet the limitations of the claim in issue.

All claim limitations must be considered-- 35 U.S.C. § 103 requires that the subject matter as a whole be reviewed. There are certain limitations of claim 6 which are still not shown in the combination proposed by the Examiner. For example, nothing in the cited references discloses an insulation housing or the need for a desired thickness to enable use down to -10° F. The shell 30 of Nitschke is intended merely as a casing to protect the various components, not an insulation housing. So, the mere fact that Nitschke discloses a stainless steel shell does not mean that it describes an insulation

housing, as recited in claim 6. According to 35 U.S.C. § 103, it must be considered and given proper weight if the correct result is to be reached.

Prior art does not teach the source of the problem--Nothing in the cited references refers to the need to have an outside waste oil containment device that can effectively store waste oil in cold temperatures. In fact, none of the references makes any mention of utilizing an outdoor oil containment device. The prior art clearly does not teach the source of the problem and therefore could not be said to teach its solution.

Claim 7

Obviousness to try and modification or combination of references is not the standard-- Nothing in any of the cited references could be said to suggest a combination of the shell of Nitschke with the oil containment units of either Shumate or Onken. None of the references describes a need for insulation of the waste oil containment unit, and in fact, Nitschke never makes any mention of a waste oil containment unit. The shell of Nitschke would serve no purpose in either Shumate or Onken. A *prima facie* case of obviousness is not made out when two references are improperly combined and then modified further to meet the limitations of the claim in issue.

All claim limitations must be considered--35 U.S.C. § 103 requires that the subject matter as a whole be reviewed. There are certain limitations of claim 7 which are

still not shown in the combination proposed by the Examiner. For example, “wherein the body is wrapped with a stainless steel skin, wherein a space between the body and the skin is approximately $\frac{1}{2}$ inch,” as recited in Claim 7 is not disclosed or described in any of the cited references. Nitschke makes no mention of distances between the shell 30 and the remainder of the fryer. In fact, given the construction shown in the various figures, it appears that the distance between the shell and the various components would vary greatly. According to 35 U.S.C. § 103, it must be considered and given proper weight if the correct result is to be reached.

Prior art does not teach the source of the problem-- Nothing in the cited references refers to the need to have an outside waste oil containment device that can effectively store waste oil in cold temperatures. In fact, none of the references makes any mention of utilizing an outdoor oil containment device. The prior art clearly does not teach the source of the problem and therefore could not be said to teach its solution.

The arguments above relating to claim 7 are equally applicable to claim 8, and are hereby incorporated by reference.

Conclusion

New claims 11-18 have been added. The Office is authorized to charge Deposit Account No. 50-1210 for any additional fees for the independent claims or any other reason. Applicants now believe that this amendment complies with the regulations and

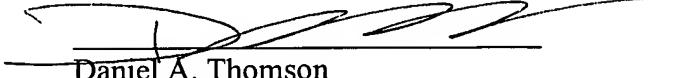
thus requests examination of this Amendment A. Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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